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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,149	03/03/2004	John Joseph Scarchilli	9173L	4849

27752 7590 08/28/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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CINCINNATI, OH 45224

EXAMINER

ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/792,149

Applicant(s)

SCARCHILLI ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-10, 14 and 16-23 is/are rejected.
- 7) ☒ Claim(s) 4-7, 11-13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-10, 16-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Werner et al.

There is disclosed in Werner an infusing pod comprising a fluid distribution member 16, 20 situated in a top plane and a liquid permeable first filter member 10 wherein the first filter member is engaged with the fluid distribution member, by way of tie strings 14 which allow the filter to hang, forming a first interior chamber (containing a material 12), the fluid distribution member comprising at least one injection nozzle 20 protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port 24 that directs fluid into the first interior chamber in a direction that is not normal to the top plane.

In regards to the liquid dispersible material used, while coffee grounds are shown, Werner recites that other types could be used. The type of material is not structurally limiting to the device itself. The structural limitations of the claim have been met by the prior art.

Claims 1-3, 8-10, 14 and 16-21 rejected under 35 U.S.C. 102(b) as being anticipated by Clermont.

Clermont discloses a liquid infusion cartridge (pod) comprising a fluid distribution member 12, 16 situated in a top plane and a liquid permeable first filter 15 wherein the first filter is sealed (engaged) to the fluid distribution member forming a first interior chamber that comprises liquid dispersible material 17, the fluid distribution member including an injection nozzle 12 protruding downward from the top plane into the interior chamber, the nozzle having at least one infusion port (apertures) that directs fluid into the chamber.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-10, 14 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cai '007 in view of Clermont.

There is disclosed in Cai a liquid infusion pod 30 comprising a fluid distribution member 105 (see figure 10, col. 9, lines 21-41) situated in a top plane and a liquid permeable first filter member 40 that is sealed (engaged) to the liquid distribution member, wherein the first filter member and the fluid distribution member form a first interior chamber and within the first interior chamber is a self contained, pre-dosed pod 42a having a second interior chamber that comprises a liquid dispersible material 33 (see figure 11).

Clermont discloses a fluid distribution member comprising an injection nozzle protruding downward from a top plane into and interior chamber, the nozzle having at least one infusion port (apertures) that directs fluid into the chamber.

It would have been obvious to one skilled in the art to substitute the fluid distribution member of Cai with that disclosed in Clermont, in order to introduce fluid to the material at a level below an upper surface thereof.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu in view of Werner et al.

There is disclosed in Wu a liquid infusion pod comprising a fluid distribution member 14, 22 situated in a top plane and a liquid permeable first filter member 21 wherein the filter and distribution member form a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle 22 protruding downward from the top plane into the first interior chamber, the injection nozzle has at least one infusion port and at least one deflection plate 15 wherein liquid flows through the infusion port and is directed onto the deflection plate (see figure 4).

Allowable Subject Matter

Claims 4-7, 11-13 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 28 July 2006 have been fully considered but they are not persuasive. Applicant argues that the prior art reference of Werner fails to disclose a filter element which is engaged to a fluid distribution member. The filter of Werner is provided with tie strings which allow the filter to be secured to the distribution member by closing the filter at its top and allowing it to be supported by the distribution member. Applicant has failed to specifically define any structural means which define the engagement of the filter with the distribution means. Thus, the limitations of the claim are met by the Werner arrangement.

Applicant argues that there is no motivation to combine the references of Cai and Clermont. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case, the substitution of one distribution member for another, so as to allow entry of hot water to the brewing material from a central location within the material is taught to be an advantage over the entry of water from above the material.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

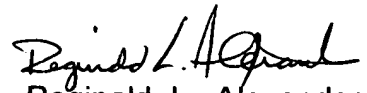
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
21 August 2006


Reginald L. Alexander
Primary Examiner
Art Unit 1761